

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

ERIK AKERMAN, *on behalf of himself  
and all others similarly situated,*

Plaintiff,

v.

ITHACA COLLEGE,

Defendant.

Case No. 3:23-CV-1565 (TJM/TWD)

**CLASS ACTION COMPLAINT  
AND DEMAND FOR JURY  
TRIAL**

Plaintiff Erik Akerman (“Plaintiff”), by and through his undersigned counsel, brings this Class Action Complaint against Defendant Ithaca College (“Ithaca” or “Defendant”), and alleges as follows based upon information and belief, except as to the allegations specifically pertaining to him, which are based on personal knowledge.

**NATURE OF THE ACTION**

1. Higher education is no different from any other industry in as much as consumers (*i.e.*, students) have the ability to shop between different educational products offered by competitive institutions before ultimately purchasing the product that is right for them.

2. Some colleges and universities offer an educational product without access to a campus or in-person community, while others offer an educational

product with access to a varied suite of services, activities, facilities and experiences through an on-campus, in-person educational experience.

3. Ithaca primarily offers students an in-person educational experience featuring traditional, face-to-face lecture and laboratory courses, and offers a limited selection of courses in online-only formats.

4. Plaintiff, an undergraduate student during the Spring 2020 semester, paid tuition to enroll in Ithaca's on-campus, in-person education program, including all the benefits and services associated therewith for the entirety of the Spring 2020 semester.

5. Plaintiff's paid-for experience was cut short midway through the Spring 2020 semester, when that in-person educational experience was taken away from Plaintiff and other students at Ithaca.

6. In March 2020, in response to the outbreak of the SARS-CoV-2 virus, the virus that causes the COVID-19 disease (the "COVID-19 pandemic"), Ithaca, like many other colleges and universities, transitioned to online-only distance learning, canceled on-campus recreational events, canceled student activity events, and ordered students to refrain from going on campus.

7. As a result, all on-campus education, services, and amenities were no longer available to Ithaca students for the remainder of the Spring 2020 semester.

8. Despite the harsh reality that students could no longer enjoy the benefit

of the bargain for which they pre-paid, Ithaca refused to provide a prorated refund of tuition tied to its on-campus education, services, and amenities that were not available to students for a significant part of the Spring 2020 semester.

9. Accordingly, Ithaca's students lost the benefits of the bargain for services and the experience they paid for but could no longer access or use following the school's transition to remote learning in March 2020.

10. By not giving prorated refunds for tuition charged for on-campus education and services not provided, Ithaca breached its contracts with its students or was otherwise unjustly enriched.

11. It cannot be disputed that the circumstances underlying this legal action are unfortunate and unprecedented. However, the students did not choose these circumstances, and they certainly did not agree to pay tuition for online-only education and services.

12. It is unfair and unlawful for Ithaca to retain tuition paid for campus-based in-person education and services not being provided and to pass the financial losses on to its students.

13. Importantly, Plaintiff does not challenge Defendant's discretion in adhering to federal, state, and local health guidelines, but rather challenges Ithaca's decision to retain the tuition, paid by Plaintiff and other students for in-person education, experiences, access to campus, and services, without providing such for

the entire duration of the Spring 2020 semester.

14. Plaintiff brings this class action for damages and restitution resulting from Ithaca's retention of the tuition paid by Plaintiff and the other putative Class members for in-person education and services not being provided. Specifically, this lawsuit seeks a partial prorated tuition reimbursement representing the difference in fair market value between the educational product for which Plaintiffs and Class members paid, including face-to-face instruction and access to campus facilities and services, and the online product that they actually received.

### **PARTIES**

15. Plaintiff, Erik Akerman, is an adult, who at all relevant times, is a resident and citizen of the State of New York. He paid tuition for the Spring 2020 semester. Halfway through the Spring 2020 semester, Plaintiff was forced to take his classes remotely, refrain from visiting campus, and prevented from utilizing various on-campus services for which he paid.

16. Plaintiff was an undergraduate student enrolled at Ithaca for the Spring 2020 semester, which was scheduled to run from approximately January 21, 2020 to May 8, 2020. Plaintiff did not have access to the campus after mid-March 2020 because the campus was closed due to the COVID-19 pandemic. Plaintiff paid tuition for an in-person educational experience during the Spring 2020 semester, the

benefits of which he lost because Ithaca closed the campus and cut off access to on-campus services, facilities, and extracurricular activities.

17. Defendant, Ithaca, is a private college founded in 1892. Ithaca offers around 70 undergraduate and graduate degree programs and enrolls students from 49 states and dozens of foreign countries. Ithaca's main campus is located in the Town of Ithaca, Tompkins County, New York. Defendant is a citizen of New York.

#### **JURISDICTION AND VENUE**

18. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A), as modified by the Class Action Fairness Act of 2005, because at least one member of the Class, as defined below, is a citizen of a different state than Defendant, there are more than 100 members of the Class, and the aggregate amount in controversy exceeds \$5,000,000 exclusive of interests and costs.

19. This Court has personal jurisdiction over Defendant because many of the acts and transactions giving rise to this action occurred in this District, and because Defendant conducts substantial business by operating its principal campus in this District and soliciting students residing in this District to attend its institution.

20. Venue is proper in this Court pursuant to 28 U.S.C. § 1331 because many of the acts and transactions giving rise to this action occurred in this District, specifically, the contracts that are the subject of this action were formed in this District, and the performance and breach of contract also occurred in this District.

## FACTUAL ALLEGATIONS.

21. Prior to the COVID-19 pandemic, Ithaca had a longstanding tradition of offering most of its courses in face-to-face classroom settings on campus.<sup>1</sup> In accordance with this prior course of conduct, Ithaca scheduled the vast majority of its Spring 2020 courses to be in-person and on-campus.

22. Ithaca's online course enrollment system permits students to search available classes according to course delivery method.<sup>2</sup> Options include traditional, face-to-face scheduling arrangements like "Lecture" and "Lab," but students may also search for courses with "Online: Synchronous," "Online: Asynchronous," and "Hybrid" scheduled, which incorporate remote learning technologies. When Ithaca students used this system to enroll in classes for the Spring 2020 semester, they made

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<sup>1</sup> See, e.g., *Anticipating a Vibrant Fall 2021 at Ithaca College*, IC News (Apr. 7, 2021), <https://www.ithaca.edu/news/anticipating-vibrant-fall-2021-ithaca-college> (last accessed Dec. 6, 2023) (stating that "[l]imited online coursework will be available [in Fall 2021], mirroring our pre-pandemic scheduling practices.") (emphasis added); see also *Revised Plans for Spring 2022 Semester Opening*, Ithaca College, <https://www.ithaca.edu/office-president/communications/messages-campus-leadership/revised-plans-spring-2022-semester-opening> (last accessed December 6, 2023) (stating that "[Yellow] status allows for much of the traditional Ithaca College experience to remain intact including face-to-face instruction")

<sup>2</sup> See generally *Ithaca College Course Registration*, Ithaca College, <https://homerapps.ithaca.edu/StudentRegistrationSsb/ssb/classSearch/classSearch> (select "Browse Classes," then select term "Spring 2020 (View Only)," then select "Advanced Search," and click inside "Schedule Type" field to reveal dropdown menu).

informed choices about whether to spend their tuition dollars on in-person or online modes of course delivery.

23. Ithaca recognizes that courses offered through online distance learning offer very different educational experiences from courses offered in face-to-face classroom settings. In its academic catalog, Ithaca explains that:

Because online coursework can vary in modes of delivery and technical sophistication, and students taking online courses are expected to assume much greater independent responsibility, special restrictions may be necessary, or even required, as conditions for enrollment in an online course or program. These requirements must be communicated to prospective students prior to enrollment.<sup>3</sup>

24. To enroll in classes, Ithaca students are required to pay tuition. The Spring 2020 semester was originally scheduled to commence on or about January 21, 2020, and end on or around May 8, 2020.<sup>4</sup>

25. Tuition for the Spring 2020 semester was approximately \$22,637 for full-time undergraduate students.<sup>5</sup> Tuition ranged between approximately \$800 and

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<sup>3</sup> *Undergraduate Catalog 2023-2024*, Ithaca College, <https://catalog.ithaca.edu/undergrad/academic-information/distance-online-learning-policy> (last visited Nov. 29, 2023).

<sup>4</sup> *Spring 2020 Academic Calendar*, Ithaca College, <https://ithaca.teAMDynamix.com/TDClient/38/Registrar/KB/ArticleDet?ID=953> (last visited Nov. 29, 2023).

<sup>5</sup> *Undergraduate Catalog 2019-2020*, Ithaca College, <https://catalog.ithaca.edu/archive/2019-2020/undergrad/financial-aid/expenses> (last visited Nov. 29, 2023).

\$1485 per credit hour for graduate students in on-campus classes, depending on degree program.<sup>6</sup>

26. Ithaca uses its marketing materials, course catalog, and other bulletins to solicit students for its in-person, on-campus educational programs. In these materials, Ithaca emphasizes that in-person, face-to-face interaction is an essential component of students' educational experience.

27. Ithaca declares in its Vision Statement that it "strives to become the standard of excellence for student-centered comprehensive colleges, fostering intellect, creativity, and character in an active and inclusive *residential learning community*."<sup>7</sup>

28. As an institution, Ithaca defines itself primarily as a residential college that offers students access to outstanding facilities. For example, at the outset of Spring 2020 semester, Ithaca's president stated that the college's strategic goals were to "retain the highest level of students, *deliver the best experience in a residential*

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<sup>6</sup> *Graduate Tuition and Fees*, Ithaca College, <https://web.archive.org/web/20200508234706/https://www.ithaca.edu/tuition-financial-aid/graduate-costs-financial-aid/graduate-tuition-fees> (captured May 8, 2020).

<sup>7</sup> *Undergraduate Catalog 2019-2020*, Ithaca College, <https://catalog.ithaca.edu/archive/2019-2020/undergrad/mission> (last visited Nov. 28, 2023) (emphasis added).

*program, have the best physical plant 12 months out of the year, and be an employer of choice.”<sup>8</sup>*

29. Face-to-face interaction between students and faculty is a core feature of the educational product that Ithaca markets to prospective students. For example, Ithaca highlights its “undergraduate focus and close connections between faculty and students,”<sup>9</sup> and encourages students to “[c]ollaborate one-on-one with expert faculty in professional-level research and creative scholarly projects.”<sup>10</sup>

30. Face-to-face interaction among students is also a central component of the Ithaca educational experience, as Ithaca emphasizes in marketing materials promoting residential life on campus. For example, Ithaca promises that “[o]n this residential campus, so much learning and growing happens outside the classroom. Each residence hall is a mini-community—some with a focus on academic or cultural experiences—offering events, activities, and welcoming spaces.”<sup>11</sup>

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<sup>8</sup> *President Collado Urges College Forward from a ‘Position of Strength,’* IC News (Jan. 30, 2020), <https://www.ithaca.edu/news/president-collado-urges-college-forward-position-strength> (last visited Nov. 28, 2023) (emphasis added).

<sup>9</sup> *School of Humanities and Sciences: About,* Ithaca College, <https://web.archive.org/web/20190706233940/https://www.ithaca.edu/academics/school-humanities-and-sciences/about> (captured Jul. 6, 2019).

<sup>10</sup> *School of Humanities and Sciences,* Ithaca College, <https://web.archive.org/web/20190401041846/https://www.ithaca.edu/academics/school-humanities-and-sciences> (captured Apr. 1, 2019).

<sup>11</sup> *Discover Life at IC,* Ithaca College, <https://web.archive.org/web/20190331214452/https://www.ithaca.edu/life-at-ic> (captured Mar. 31, 2019).

31. In fact, Ithaca *requires* all undergraduate students to live in campus residence halls during their first three years. In its Policy Manual, Ithaca explains to students that it maintains this requirement because residential life is central to the educational product Ithaca offers:

“Ithaca College is a residential college. The College recognizes the developmental value of a residentially based education and believes that residence hall living is a key component of a student's overall educational experience.”<sup>12</sup>

32. Ithaca also promotes access to its facilities as a key benefit to students enrolled in its in-person educational programs. These facilities include:

- a. The Ithaca College Library, a facility “organized to support a variety of user needs, with group study and quiet/silent study zones” and “open 24/5 (Sunday - Thursday) during the academic semesters, providing a comfortable and welcoming space for students to work collaboratively or individually in a wireless environment.” The library also offers several in-person services and spaces including a Digital Media Lab, a

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<sup>12</sup> 7.5.1 *Residence/Off Campus Policy*, Ithaca College, <https://www.ithaca.edu/policy-manual/volume-vii-students/75-residential-life/751-residenceoff-campus-policy> (last accessed Nov. 29, 2023).

Flash Studio, computer workstations equipped with a full suite of software applications, scanners, and printers;<sup>13</sup>

- b. The Fitness Center, accessible to students with their college ID, which features a 6,800 square foot exercise area with cardio equipment and weight machines, an aerobics room offering group exercise classes; two large gyms available for pickup games and intramural activities, a climbing wall; and equipment rentals;<sup>14</sup>
- c. The Campus Center, a multipurpose facility that features “lounges [that] offer perfect places to relax between classes,” an event space that “host[s] year-round activities . . . late night social events, and conferences,” and the recreation center, “complete with a big-screen television, air hockey, Ping-Pong, foosball, and pool tables;”<sup>15</sup>
- d. The Whalen Center for Music, with “over 80 practice rooms and 182 pianos . . . a music education resource room, smart classrooms, an

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<sup>13</sup> *Undergraduate Catalog 2019-2020*, Ithaca College, <https://catalog.ithaca.edu/archive/2019-2020/undergrad/general-information/academic-services/> (last accessed Dec. 6, 2023).

<sup>14</sup> *Ithaca College Fitness Center*, Ithaca College, <https://web.archive.org/web/20200422035334/https://www.ithaca.edu/sacl/recsport/s/fitnesscenter/> (captured Apr. 22, 2020).

<sup>15</sup> *Campus Center*, IC Events Calendar, [https://web.archive.org/web/20190606162756/https://events.ithaca.edu/campus\\_center](https://web.archive.org/web/20190606162756/https://events.ithaca.edu/campus_center) (captured Jun. 6, 2019).

electroacoustic music studio, and sound recording technology studios;”<sup>16</sup>

- e. Concert halls such as Ford Hall, “a new projection screen, 644 seats, an improved sound system, and a beautiful new hardwood interior” accommodating “large ensembles, guest artists, and senior recitals”<sup>17</sup> and Hockett Family Recital Hall, a smaller venue that is “the ideal hall for chamber music, faculty recitals, and the graduate and junior recitals;”<sup>18</sup> and
- f. The Dillingham Center, “one of Ithaca’s most distinctive structures” housing theaters, dance studios, and performance spaces.<sup>19</sup>

33. On its website encouraging prospective students to explore student life at the college, Ithaca highlights its Office of Student Engagement, which offers extracurricular organizations, events, and programs for students. Ithaca tells

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<sup>16</sup> *Whalen Center for Music*, IC Events Calendar, [https://web.archive.org/web/20190620183531/https://events.ithaca.edu/whalen\\_center\\_for\\_music\\_24](https://web.archive.org/web/20190620183531/https://events.ithaca.edu/whalen_center_for_music_24) (captured Jun. 20, 2019).

<sup>17</sup> *Ford Hall*, IC Events Calendar, [https://web.archive.org/web/20190707123900/https://events.ithaca.edu/ford\\_hall\\_237](https://web.archive.org/web/20190707123900/https://events.ithaca.edu/ford_hall_237) (captured Jul. 7, 2019).

<sup>18</sup> *Hockett Family Recital Hall*, IC Events Calendar, [https://web.archive.org/web/20190605062445/https://events.ithaca.edu/hockett\\_family\\_recital\\_hall\\_410](https://web.archive.org/web/20190605062445/https://events.ithaca.edu/hockett_family_recital_hall_410) (captured Jun. 5, 2019).

<sup>19</sup> *Dillingham Center*, IC Events Calendar, [https://web.archive.org/web/20190601005306/https://events.ithaca.edu/dillingham\\_center\\_702](https://web.archive.org/web/20190601005306/https://events.ithaca.edu/dillingham_center_702) (captured Jun. 1, 2019).

prospective students that they can “[f]ind friends who share your passion for service, culture, gaming—you name it—in over 200 student organizations.”<sup>20</sup>

34. Moreover, Ithaca promotes the location of its campus as a compelling reason for students to decide to attend. Ithaca advertises that “[The city of] Ithaca is a city that has everything—from hiking trails and art galleries to farmers markets and startup incubators. In one of the best college towns in the U.S., you can meet and be inspired by brilliant people every day.”<sup>21</sup>

35. Plaintiff and members of the Class paid their tuition in the Spring 2020 semester to enjoy everything Ithaca offered them, including on-campus resources, campus community, and in-person education throughout the entire Spring 2020 semester.

36. When enrolling in classes for the Spring 2020 semester, Plaintiff and members of the Class chose to enroll in classes offered in-person, to obtain the benefits outlined above.

37. Despite Plaintiff and Class members paying Spring 2020 semester tuition to attend Ithaca for an in-person and on-campus educational experience, Ithaca failed to provide the promised in-person education for the duration of the

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<sup>20</sup> *Discover Life at IC*, Ithaca College, <https://web.archive.org/web/20190331214452/https://www.ithaca.edu/life-at-ic> (captured Mar. 31, 2019).

<sup>21</sup> *Discover Life at IC*, Ithaca College, <https://web.archive.org/web/20190331214452/https://www.ithaca.edu/life-at-ic> (captured Mar. 31, 2019).

entire Spring 2020 semester, instead providing only online instruction for more than half of the Spring 2020 semester.

**A. In Response to COVID-19, Ithaca Closed Campus, Preventing Access to its Facilities, Services, Housing, and Dining, and Cancelled All In-Person Classes.**

38. On March 11, 2020, in response to COVID-19, Ithaca extended its one-week spring break to two weeks. Ithaca planned to resume classes on Monday, March 23, 2020, and use only remote online methods of instruction until at least April 6, 2020.<sup>22</sup>

39. Ithaca asked students who remained on campus to leave campus as soon as possible, and no later than 5:00 pm on Sunday, March 15, 2020.<sup>23</sup> Students were required to seek Ithaca's approval to stay on campus and advised that campus facilities would have "extremely limited hours and services."<sup>24</sup>

40. On March 17, 2020, Ithaca extended remote-only instruction through the end of Spring 2020 semester.<sup>25</sup> Ithaca also blocked students' ID card access to

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<sup>22</sup> *Critical Information about Coronavirus-Related Decisions*, IC News (Mar. 11, 2020), <https://www.ithaca.edu/news/critical-information-about-coronavirus-related-decisions> (last accessed Nov. 29, 2023).

<sup>23</sup> *Id.*

<sup>24</sup> *Coronavirus Update and FAQ on Campus Operations*, IC News (Mar. 13, 2020), <https://www.ithaca.edu/news/coronavirus-update-and-faq-campus-operations> (last accessed Nov. 29, 2023).

<sup>25</sup> *Remote Instruction Extended Through End of Semester*, IC News (Mar. 17, 2020), <https://www.ithaca.edu/news/remote-instruction-extended-through-end-semester> (last accessed Nov. 29, 2023).

residence halls and closed the majority of campus facilities for the remainder of the semester.<sup>26</sup>

41. Around the same time, Ithaca closed most of its campus facilities to students, including the library<sup>27</sup> and fitness center,<sup>28</sup> and cancelled in-person events<sup>29</sup> and athletic competitions.<sup>30</sup>

42. Ithaca did not hold any in-person classes for undergraduate students between March 6, 2020 and the end of Spring 2020 term. All Spring 2020 classes after March 6, 2020 were only offered in a remote, online format with no in-person, face-to-face engagement between students and faculty.

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<sup>26</sup> *Housing Update and Move-Out Planning Information*, IC News (Mar. 17, 2020), <https://www.ithaca.edu/news/housing-update-and-move-out-planning-information> (last accessed Nov. 29, 2023).

<sup>27</sup> *Keep Learning*, Ithaca College Library, <https://web.archive.org/web/20200317204522/https://libguides.ithaca.edu/keeplearning> (captured Mar. 17, 2020) (stating that “the College has closed the library for the remainder of the Spring Semester.”)

<sup>28</sup> *Office of Recreational Sports*, Ithaca College, <https://web.archive.org/web/20200725085634/https://www.ithaca.edu/sacl/recsport/s/fitnesscenter/hours/> (captured Jul. 25, 2020) (stating that “the Fitness Center will be closed for the remainder of the Spring 2020 Semester.”)

<sup>29</sup> *New Restrictions Announced for Campus Events and College-Sponsored Travel*, IC News (Mar. 10, 2020), <https://www.ithaca.edu/news/new-restrictions-announced-campus-events-and-college-sponsored-travel> (last accessed Nov. 29, 2023).

<sup>30</sup> *All Ithaca College Athletics Spring Competitions Canceled*, Ithaca College Athletics (Mar. 13, 2020), <https://athletics.ithaca.edu/news/2020/3/13/general-all-ithaca-college-athletics-spring-competitions-canceled.aspx> (last visited Nov. 29, 2023).

43. Most campus facilities and services were terminated, cancelled, or severely curtailed at or about this time, such as access to the library, recreation center, health and wellness facilities and intramural facilities, as well as student organizations, programs, athletic events and arts performances.

44. In a message to the campus community on March 23, 2020, Ithaca's president acknowledged to students that Ithaca's response to COVID-19 had resulted in "very dramatic changes to your IC [Ithaca College] experience."<sup>31</sup>

45. Despite the fact that Ithaca's closure of campus and shift to online-only distance learning effected dramatic changes to students' bargained-for educational experience, Ithaca refused to adjust its tuition costs or offer any form of tuition refund.

**B. Students Experienced Significant Losses, in Many Cases of Borrowed Funds as a Result of Ithaca's Conduct.**

46. At Ithaca, the median federal loan debt among borrowers who completed their undergraduate degree is \$24,000.<sup>32</sup> The median monthly federal loan

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<sup>31</sup> *Invitation to Virtual Gatherings and Sharing a Short Video*, IC News (Mar. 23, 2020), <https://www.ithaca.edu/news/invitation-virtual-gatherings-and-sharing-short-video> (last accessed Nov. 29, 2023).

<sup>32</sup> *Ithaca College Tuition & Financial Aid*, U.S. News, <https://www.usnews.com/best-colleges/ithaca-college-2739/paying> (last visited Nov. 28, 2023).

payment (if it were repaid over 10 years at 5.05% interest) for federal student loan borrowers who graduated from Ithaca is \$254.<sup>33</sup>

47. In addition, 22% of graduating students at Ithaca took out private loans.<sup>34</sup> Students with private loans had an average of \$47,851 in private loan debt at graduation.<sup>35</sup>

48. With the campus shut down for more than half of the semester, Plaintiff and the proposed Class have been deprived of the benefits of the on-campus educational experience as set forth above. Nevertheless, Ithaca has refused to refund any portion of tuition, despite not providing the on-campus educational experience and services for which students paid.

49. Students attending Ithaca's Spring 2020 semester did not choose to attend an online institution of higher learning, but instead chose to enroll in Ithaca's in-person, on campus educational program.

50. During the online portion of the Spring 2020 semester, Ithaca principally used programs by which previously recorded lectures were posted on an online learning management system for students to view on their own, or by virtual

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

Zoom meetings.<sup>36</sup> Therefore, there was a lack of classroom interaction between students and professors and among students that is instrumental in interpersonal skill development.

51. The online formats used by Ithaca did not require memorization or the development of strong study skills given the absence of any possibility of being called on in class and the ability to consult books and other materials when taking exams.

52. Students were deprived of the opportunity for hands-on, collaborative learning and in-person dialogue, feedback, and critique.

53. Ithaca recognizes that the remote portion of Spring 2020 offered students a subpar educational experience, even as compared to other online educational programs. Since the COVID pandemic, Ithaca has started offering its faculty resources to plan online courses, explaining that “*well-planned* online learning experiences are meaningfully different from courses offered online in response to a crisis,”<sup>37</sup> *i.e.* those offered during Spring 2020.

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<sup>36</sup> *Critical Information about Coronavirus-Related Decisions*, IC News (Mar. 11, 2020), <https://www.ithaca.edu/news/critical-information-about-coronavirus-related-decisions> (last accessed Nov. 29, 2023). (“We will be relying on Sakai and Zoom as the two primary tools for remote teaching.”)

<sup>37</sup> *Online Teaching*, Ithaca College, <https://www.ithaca.edu/faculty-hub/teaching-learning-strategies/online-teaching> (last accessed Dec. 6, 2023).

54. During Spring 2020, access to facilities such as libraries, laboratories, computer labs, and study rooms, integral to a university education, and access to the myriad activities offered by campus life that foster social development, leadership, wellness, independence, and networking for future careers, are all substantial and material parts of the basis upon which Ithaca can charge the tuition it charges. Contrary to Ithaca's promises, these services and facilities were not provided.

55. Ithaca provided students with prorated refunds for Spring 2020 room and board fees, basing its refund on "the percent of the semester that most students were no longer allowed to utilize campus housing and dining," *i.e.*, services that students had paid Ithaca for and which they expected to receive.<sup>38</sup> However, Ithaca has not made a similar offer to refund any portion of the tuition Plaintiff and Class members paid Ithaca for in-person educational services which they did not receive during the majority of Spring 2020 semester.

56. Plaintiff and the Class are therefore entitled to a pro-rated refund of the tuition they paid Ithaca for the Spring 2020 semester for the remaining days of that semester after classes moved from in-person to online and facilities were closed.

### **CLASS ACTION ALLEGATIONS**

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<sup>38</sup> *Update on Credits and Refunds for Unused Room and Board*, IC News (Apr. 8, 2020), <https://www.ithaca.edu/news/update-credits-and-refunds-unused-room-and-board> (last accessed Nov. 29, 2023).

57. Plaintiff brings this case individually and, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of the class defined as:

All Ithaca College students who satisfied their payment obligations for the Spring Semester 2020 tuition and who were enrolled in at least one in-person on-campus class (the “Class”).

58. Specifically excluded from the Class are all undergraduate students who received full Ithaca-funded scholarships for the Spring 2020 semester, Defendant, Defendant’s officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, principals, servants, partners, joint ventures, or entities controlled by Defendant, and its heirs, successors, assigns, or other persons or entities related to or affiliated with Defendant and/or Defendant’s officers.

59. Subject to additional information obtained through further investigation and discovery, Plaintiff reserves the right to amend, narrow, or expand the class definition.

60. **Numerosity:** The Class is so numerous that joinder of all members is impracticable. Although the precise number of Class members is unknown to Plaintiff, Ithaca reported several thousand students enrolled for the 2019-2020 school year. The names and addresses of all such students are known to Ithaca and can be identified through Ithaca’s records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination

methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.

61. **Commonality:** There are questions of law and fact common to the members of the Class including, without limitation:

- a. Whether Ithaca accepted money from Plaintiff and the Class members in exchange for the promise to provide an in-person and on-campus educational experience, as well as certain facilities and services throughout the Spring 2020 semester;
- b. Whether Ithaca breached its contracts with Plaintiff and the members of the Class by failing to provide them with an in-person on-campus educational experience and access to campus facilities and services after mid-March 2020;
- c. Whether Ithaca was unjustly enriched by retaining a portion of the tuition during the period of time Ithaca was closed during the Spring 2020 semester, and Plaintiff and the members of the Class were denied an in-person and on-campus educational experience and access to the services and facilities for which tuition and the was paid;
- d. Whether Ithaca intentionally interfered with the rights of the Plaintiff and the Class when it moved all in-person classes to a

remote online format, cancelled all on-campus events, strongly encouraged students to stay away from campus, and discontinued campus services while retaining the tuition paid by Plaintiff and the Class; and

- e. The amount of damages and other relief to be awarded to Plaintiff and the Class members.

62. **Typicality:** Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and the other Class members each contracted with Defendant for it to provide an in-person and on-campus educational experience, with access to campus services and facilities, in exchange for the tuition they paid, that Ithaca stopped providing for the remainder for the Spring 2020 semester.

63. **Adequacy of Representation:** Plaintiff is an adequate class representative because his interests do not conflict with the interests of the other Class members whom he seeks to represent. Plaintiff has retained competent counsel who are experienced in complex class action litigation, and Plaintiff intends to prosecute this action vigorously. Class members' interests will be fairly and adequately protected by Plaintiff and his counsel.

64. **Predominance.** Common questions of law and fact predominate over any questions affecting only individual Class members. Similar or identical violations, business practices, and injuries are involved. Individual questions, if any,

pale by comparison, in both quality and quantity, to the numerous common questions that dominate this action. For example, Defendant's liability and the fact of damages is common to Plaintiff and each member of the Class. If Defendant breached its contracts to Plaintiff and Class members, then Plaintiff and each Class member suffered damages by that conduct.

65. **Superiority:** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and the other Class members is relatively small compared to the burden and expense that would be required to individually litigate their claims against Ithaca, making it impracticable for Class members to individually seek redress for Ithaca's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individual litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of a single adjudication, economies of scale, and comprehensive supervision by a single court.

66. **Ascertainability:** Members of the Class are ascertainable. Class membership is defined using objective criteria, and Class members may be readily identified through Defendant's books and records.

**FIRST CLAIM FOR RELIEF**  
**BREACH OF IMPLIED CONTRACT**  
**(On Behalf of Plaintiff and the Class)**

67. Plaintiff repeats and re-alleges the factual allegations above, as if fully alleged herein.

68. Plaintiff brings this claim individually and on behalf of the members of the Class.

69. When Plaintiff and Class members paid Ithaca tuition for the Spring 2020 semester, Ithaca agreed to, among other things, provide an in-person and on-campus educational experience as well as access to campus services and facilities throughout the entire Spring 2020 semester. As a result, Plaintiff and each member of the Class entered into binding implied contracts with Ithaca.

70. When entering into implied contracts, Plaintiff and Class members reasonably believed and expected that Ithaca would provide them with an on-campus and in-person educational experience, as opposed to remote learning, and use of Defendant's facilities and services for the duration of the entire Spring 2020 semester as mutually agreed and intended in accordance with Defendant's publications, including but not limited to, its marketing materials, course catalogues,

and other bulletins, as well as Ithaca's history and prior course of providing in-person and on-campus education.

71. Plaintiff and Class members fully performed their obligations under their implied contracts with Ithaca by registering for classes and paying tuition.

72. Defendant is in possession of all contracts, materials, circulars, advertisements and the like between Plaintiff and members of the Class on one hand, and Ithaca on the other.

73. Ithaca breached its contracts with Plaintiff and the Class by failing to provide the promised in-person and on-campus educational experience as well as access to campus services and facilities throughout the Spring 2020 semester, yet has retained monies paid by Plaintiff and the Class for an on-campus and in-person educational experience and access to these services and facilities during the entire Spring 2020 semester. Plaintiff and the members of the Class have therefore been denied the benefit of their bargain.

74. Plaintiff and the members of the Class have suffered damages as a direct and proximate result of Ithaca's breach in the amount of the pro-rated portion of the tuition they each paid equal to the reduction in contracted for education and services during the portion of time the Spring 2020 semester when Ithaca discontinued in-person classes and closed campus facilities.

75. Ithaca should return such portion of the tuition to Plaintiff and each Class member.

**SECOND CLAIM FOR RELIEF**  
**UNJUST ENRICHMENT**  
**(On Behalf of Plaintiff and the Class)**

76. Plaintiff repeats and re-alleges the factual allegations above, as if fully alleged herein.

77. Plaintiff brings this claim individually and on behalf of the members of the Class in the alternative to the First Claim for Relief, to the extent it is determined that Plaintiff and the Class do not have an enforceable contract with Ithaca regarding the relief requested.

78. Plaintiff and members of the Class conferred a benefit on Ithaca in the form of tuition paid for the Spring 2020 semester. The payment of this tuition and was to be in exchange for an in-person, on-campus educational experience to be provided to Plaintiff and the members of the Class throughout the Spring 2020 semester.

79. Ithaca knowingly accepted the benefits conferred upon it by Plaintiff and Class members.

80. Ithaca has retained the full benefit of the tuition payments made by Plaintiff and the members of the Class for the Spring 2020 semester—without providing the benefits that Plaintiff and Class members were owed.

81. For example, Ithaca failed to provide Plaintiff and Class members access to many on-campus facilities and services after March 13, 2020, yet Ithaca assessed Plaintiff and Class members with tuition that covered the cost of upkeep and maintenance of such facilities and services.

82. Indeed, as a result of closing campus and moving classes online, Ithaca saved significant sums of money in the way of reduced utility costs, reduced staffing requirements, reduced or eliminated hours for hourly employees, reduced or eliminated hours for paid work student students, and otherwise.

83. Upon information and belief, the costs incurred for having an online only program is significantly lower than the overhead needed to provide classes and services on campus.

84. As a result of Ithaca's retention of all the tuition paid by Plaintiff and members of the Class during the period of time Ithaca was closed, Plaintiff and members of the Class were denied an in-person and on-campus educational experience and access to services and facilities. This was unjust and inequitable under the circumstances.

85. Allowing Ithaca to retain the full benefit of tuition paid for in-person on campus education and experiences, after reducing the benefit provided and the costs incurred by Ithaca, unjustly enriched Defendant.

86. Accordingly, Ithaca has been unjustly enriched and should return the prorated portion of the tuition that Plaintiff and Class members each paid equal to the reduction in benefit for education and services during the remainder of the Spring 2020 semester when Ithaca discontinued in-person classes and closed campus facilities.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for relief as follows:

- (a) For an order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representative of the Class and Plaintiff's attorneys as Class Counsel to represent the Class;
- (b) For an order finding in favor of Plaintiff and the Class on all counts asserted herein;
- (c) For compensatory damages in an amount to be determined by the trier of fact;
- (d) For an order of restitution and all other forms of equitable monetary relief;
- (e) Awarding Plaintiff reasonable attorneys' fees, costs, and expenses;
- (f) Awarding pre- and post-judgment interest on any amounts awarded; and,

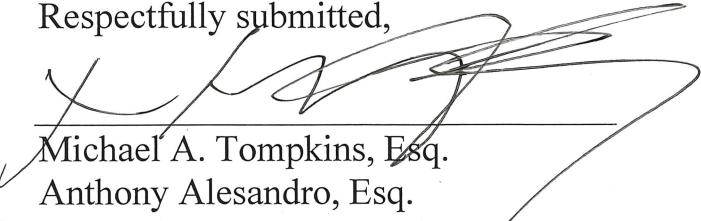
(g) Awarding such other and further relief as may be just and proper.

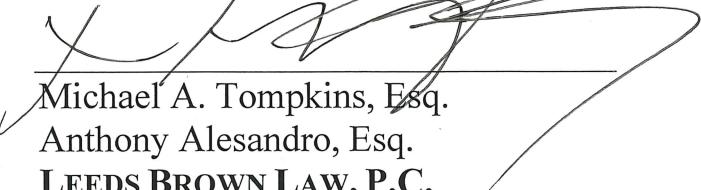
**DEMAND FOR TRIAL BY JURY**

A jury trial is demanded on all claims so triable.

Dated: December 12, 2023

Respectfully submitted,

  
Michael A. Tompkins, Esq.

  
Anthony Alesandro, Esq.

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